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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,069	01/14/2004	Nicholas J. Topitzes	074112-0126	5365
23524	7590	05/16/2006	EXAMINER	
FOLEY & LARDNER LLP 150 EAST GILMAN STREET P.O. BOX 1497 MADISON, WI 53701-1497			POLLICOFF, STEVEN B	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 05/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/757,069	<b>Applicant(s)</b> TOPITZES ET AL.	
	<b>Examiner</b> Steven B. Pollicoff	<b>Art Unit</b> 3728	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/14/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,11 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Czopor, Jr. (US Pat 4,619,364).

With respect to claims 1,11 and 21, Czopor discloses a holder comprising a platform (Fig 1 reference number 16) formed of a single sheet of thin, flexible, thermoformed plastic material (column 1 lines 47-49), the platform including a top wall, the top wall having a generally rectangular shaped exterior peripheral edge (Fig 1 generally) and the top wall comprising a plurality of integrally formed receptacles (32) disposed below the top wall, each receptacle comprising a peripheral edge having a width and a length and defining a slot in the top wall; a first receptacle wall extending down from the top wall along a first edge of the peripheral edge to a first depth below the top wall; a second receptacle wall extending down from the top wall along a second edge of the peripheral edge to a second depth below the top wall, the second depth less than or equal to the first depth; and a bottom connecting the first receptacle wall to the second receptacle wall, the width defined by the distance across the slot between the first receptacle wall and the second receptacle wall, the length defined by the distance across the slot in the direction perpendicular to the width (Fig 1 generally). Czopor

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discloses a support (24) integrally formed with the top wall along the exterior peripheral edge of the top wall and extending downward from the top wall to a depth greater than or equal to the first depth; and a flange (44,46,48,50,52) integrally formed with and extending outward from the support. Czopor also discloses a cover (12) formed of the single sheet of thin, flexible, thermoformed plastic material, the cover comprising a generally rectangular ceiling(58), a cover support (56) integrally formed with the ceiling and extending downward from the ceiling to form an opening with a cover interior peripheral edge generally matching the exterior peripheral edge of the top wall (Fig 3 generally), a cover flange (44',46',48',50',52') integrally formed with the cover support and extending outward from the cover support and a hinge (14), the cover flange integrally formed with the platform along the hinge whereby the cover can be swung from an open position to a closed position about the hinge. A closer look at the Czopor cover reveals a front, right, left and back cover wall integrally formed with the ceiling and descending downward in a generally perpendicular direction from the ceiling (Fig 1 generally) and a cover flange (50',52') integrally formed with the right cover wall and extending outward in a generally perpendicular direction from the right cover wall, and a hinge, the cover flange integrally formed with the platform along the hinge whereby the cover can be swung from an open position to a closed position about the hinge.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2,4,12,14,22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Czopor '364.

With respect to claims 2,4,12,14,22 and 24, Official notice is taken that it is old and conventional to provide reinforcement ribs in a cover (extending in any direction across the interior cover surface) to reinforce structural integrity and provide additional support against impact forces that may damage the contents of the holder. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made in view of the official notice to provide reinforcement ribs in the cover of a holder to protect the contents and help the cover retain its shape.

Claims 3,5,6,13,15,16,23,25,26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Czopor '364 as applied to claims 1,11 and 21 above and further in view of Proffitt et al., (US Pat 5,012,928).

With respect to claims 3,13 and 23, Czopor does not disclose that cut score lines extend partially through the hinge. However, Proffitt discloses a thermoformed plastic container comprising a cover and a platform integrally connected by a hinge with cut

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score lines (Proffitt column 3 lines 8-13). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the hinge of Czopor to include cut score lines, as taught by Proffitt, for the purpose of more easily separating the cover from the platform if desired.

With respect to claims 5,6,15,16,25,26 Czopor discloses that each receptacle has an integrally formed first and second protrusion to narrow the width at the first and second protrusion (Czopor Fig 1 reference number 36).

Claims 7-10,17-20 and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Czopor '364 in view of Proffitt et al., (US Pat 5,012,928) as applied to claims 1,3,5,6,11,13,15,16,21,23,25 and 26 above and further of Prinsloo et al., (US Pat 4,674,628).

With respect to claims 7,17 and 27, Czopor as modified does not disclose that the protrusions narrow the width at a common distance along the length. However, Prinsloo discloses a card holding device having slots (Prinsloo Fig 2 reference number 28) with protrusions (34,36) that narrow the width a common distance along the length so that a card can be inserted between them and gripped (column 4 lines 2-5). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the protrusions of Czopor so that they align to narrow the width a common distance along the length of the receptacle for better gripping of the contents to be inserted.

With respect to claims 8,9,18,19,28 and 29, while Czopor as modified does not disclose that the common distance is at a midpoint of the length or offset from the

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midpoint by one-quarter of the length, it would have been an obvious matter of design choice to one of ordinary skill in the art at the time of the invention to have the protrusions placed at the midpoint of the length or one-quarter of the length from the midpoint, since Applicant has not disclosed that by doing so solves any state problem or is for any particular purpose and it appears that the invention would perform equally well (gripping the contents) with the staggered protrusion arrangement as shown in Fig 1 of Czopor.

With respect to claims 10,20 and 30, while Czopor as modified does not disclose that the first and second receptacle walls have integral third and fourth protrusions at a distance offset from the midpoint by one-quarter of the length, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include additional protrusions within the receptacle at various points from the midpoint to increase the gripping capability to better retain a badge/card/license within that receptacle, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Merrell et al., (US PG Pub 2001/0006153) discloses a thermoformed plastic container with reinforcing ribs along the cover. Stevens et al., (US Pat 3,082,903) discloses an integral package with a platform and cover.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Pollicoff whose telephone number is (571)272-7818. The examiner can normally be reached on M-F: 7:30A.M.-4:00P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SBP 5/4/06  
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